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Attorneys for Plaintiffs/Counterdefendants

BECKMAN COULTER INC. and ORCHID CELLMARK INC.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BECKMAN COULTER INC., a Delaware  
corporation, and ORCHID CELLMARK INC.,  
a Delaware corporation,

Plaintiffs,

v.

SEQUENOM, INC., a Delaware corporation,

Defendant.

Case No. 08 CV 1013 W POR

**BECKMAN COULTER INC. AND ORCHID  
CELLMARK INC.'S REPLY TO  
SEQUENOM, INC.'S COUNTERCLAIMS**

AND RELATED COUNTERCLAIM

**REPLY TO COUNTERCLAIMS**

Plaintiffs and counterdefendants Beckman Coulter Inc. and Orchid Cellmark Inc. (collectively “Beckman”), through undersigned counsel, respond to Defendant Sequenom, Inc.’s (“Sequenom”) Counterclaims to Plaintiffs’ Complaint for Patent Infringement as follows:

**THE PARTIES**

1. Beckman is without knowledge or information sufficient to form a belief as to the truth of Defendant’s allegations of paragraph 1 of Defendant’s Counterclaims and therefore deny the same.

2. Beckman admits the allegations of paragraph 2 of Defendant’s Counterclaims.

3. Beckman admits the allegations of paragraph 3 of Defendant’s Counterclaims.

**JURISDICTION AND VENUE**

4. Beckman admits that Sequenom has plead its counterclaims under the Patent Laws of the United States and that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1367, 1338(a), 2201, and 2202. Except as expressly admitted, the allegations of paragraph 4 of Defendant’s Counterclaims are denied.

5. Beckman admits the allegations of paragraph 5 of Defendant’s Counterclaims.

6. Beckman admits the allegations of paragraph 6 of Defendant’s Counterclaims.

**COUNT I**

**(Declaratory Judgment Regarding U.S. Patent No. 5,888,819)**

7. Beckman incorporates by reference as if fully set forth herein each of its replies to paragraphs 1 through 6 of Defendant’s Counterclaims.

8. Beckman admits that an actual controversy exists between Beckman and Sequenom as to the validity and infringement of U.S. Patent No. 5,888,819 (“the ‘819 patent”), but denies that such patent is invalid and not infringed by Sequenom.

9. Beckman denies the allegations of paragraph 9 of Defendant’s Counterclaims.

10. Beckman denies the allegations of paragraph 10 of Defendant’s Counterclaims.

11. Beckman denies the allegations of paragraph 11 of Defendant’s Counterclaims.

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**COUNT II**

**(Declaratory Judgment Regarding U.S. Patent No. 6,004,744)**

12. Beckman incorporates by reference as if fully set forth herein each of its replies to paragraphs 1 through 6 of Defendant's Counterclaims.

13. Beckman admits that an actual controversy exists between Beckman and Sequenom as to the validity and infringement of U.S. Patent No. 6,004,744 ("the '744 patent"), but denies that such patent is invalid and not infringed by Sequenom.

14. Beckman denies the allegations of paragraph 14 of Defendant's Counterclaims.

15. Beckman denies the allegations of paragraph 15 of Defendant's Counterclaims.

16. Beckman denies the allegations of paragraph 16 of Defendant's Counterclaims.

**COUNT III**

**(Declaratory Judgment Regarding U.S. Patent No. 6,537,748)**

17. Beckman incorporates by reference as if fully set forth herein each of its replies to paragraphs 1 through 6 of Defendant's Counterclaims.

18. Beckman admits that an actual controversy exists between Beckman and Sequenom as to the validity and infringement of U.S. Patent No. 6,537,748 ("the '748 patent"), but denies that such patent is invalid and not infringed by Sequenom.

19. Beckman denies the allegations of paragraph 19 of Defendant's Counterclaims.

20. Beckman denies the allegations of paragraph 20 of Defendant's Counterclaims.

21. Beckman denies the allegations of paragraph 21 of Defendant's Counterclaims.

**REPLY TO SEQUENOM'S PRAYER FOR RELIEF**

Beckman denies that Sequenom is entitled to any relief whatsoever, including the relief that Sequenom requests in its Answer and Counterclaims.

**AFFIRMATIVE DEFENSES**

Beckman alleges and asserts the following defenses in response to the allegations in Defendant's Counterclaims.

22. Sequenom's Counterclaims fail to state a claim upon which relief can be granted.

23. Beckman Coulter Inc. and Orchid Cellmark Inc. reallege the allegations of their

1 Complaint. The claims of the '819, '744, and '748 patents are valid and enforceable in all respects, and  
2 are infringed by Sequenom.

3 DATED: August 29, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

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5 /s/ Susan M. Spaeth

6 Susan M. Spaeth

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15 Attorneys for Plaintiffs/Counterdefendants

16 BECKMAN COULTER INC. and

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17 61487900 v1

**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on August 29, 2008, with a copy of this document via the Court's CM/ECF system per Local Rules and Administrative Policies Section 2(d).

Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Susan M. Spaeth  
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